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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1247 825

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTERHOUSE COMPANY AND BERTRAND SALOY, PLAINTIFFS IN ERROR,

VS.

THE BUTCHERS' UNION SLAUGHTERHOUSE AND LIVE STOCK LANDING COMPANY, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Henry Powers' Print, 117 Poydras st., cor. Camp, N. O., La.

Filed Jany. 12th 1886.

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SUPREME COURT

OF THE STATE OF LOUISIANA.

Appeal from the Civil District Court for the Parish of Orleans, Division D.

Butchers' Union Slaughterhouse and Live Stock Landing Company
vs.
The Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy.

No. 11489.

PETITION.

Filed May 28th, 1884.

To the Hon. Civil District Court for the Parish of Orleans, La.

The petition of the Butchers' Union Slaughterhouse and Live Stock Landing Company, through Aman Troescher, President, a corporation formed under the Laws of Louisiana and domiciled in the City of New Orleans, respectfully shows that the Crescent City Live Stock Landing and Slaughterhouse Company, a corporation created by Act 118, 1869, of which Joseph Hernandez is President and domiciled in this city and Bertrand Saloy residing in this city, are indebted in solido unto your petitioner in the sum of Eight Thousand Dollars, and the said Company, defendant in the further sum of Seventy Thousand Dollars for this, to-wit:

That soon after the adoption of the present State Constitution early in 1880, your petitioner was organized by an association of Butchers for the purpose of manufacturing oxen and cows into

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That soon after the adoption of the present State Constitution early in 1880, your petitioner was organized by an association of Butchers for the purpose of manufacturing oxen and cows into

beef, calves into veal, sheep into mutton, and hogs into pork, and erecting, keeping and maintaining slaughterhouses and their accessories, live stock yards, pens, &c., and all conveniences for carrying on the business pursued by the defendant Company, and petitioned the City Council to designate by ordinance the place or places where such business might be carried on, and anticipating the final action of the City Council and of the Board of Health, your petitioner on 24th August, 1880, bought a tract of land, squares Nos. 57 and 58, bounded by the Mississippi River, Flood, Delaronde streets and Caffin Avenue, for $6000, $1000 cash and rest on time, and employed an Architect and Civil Engineer and under a contract to erect a slaughterhouse upon said land, and had built upon and well nigh completed said slaughterhouse, and would have had it completed and open and ready for business, but for the injunction procured by the defendant. Petitioners had stock sufficient subscribed to have finished and completed their slaughterhouses and to put it into operation, and had resources to extend it as the business increased, and could have done a prosperous and remunerative business and were prepared to open and carry on a slaughterhouse, so as to have slaughtered two hundred animals per day, and they had the express promise of the patronage of more than half of the butchers of New Orleans, and they would have obtained more than half of the whole business by the superior cleanliness, convenience and proximity to the markets of their slaughterhouse and by doing the business at less price, and the said business would have been extremely profitable.

That about 18th November, 1881, the City Council passed an ordinance designating the following limits within which slaughterhouse, abatoirs, live stock landings and pens might be kept and maintained, to-wit:

"The lower line of the Parish of Orleans, Reynes street, the Mississippi River and Goodchildren street," and said ordinance received the concurrent approval of the Board of Health on the 25th November 1881, and from this date petitioners could have commenced business and made a profit of $30,000 per annum, but for the illegal issuance of the injunction hereinafter named which was finally dissolved on the 5th May, 1884, by the Supreme Court of the United States.

Now your petitioner shows that said Company, defendant, through its President, officers, agents and servants wickedly and maliciously contriving to injure and harass and annoy your petitioner, and notwithstanding the fact that in a litigation provoked by itself in which it had alleged its monopoly to be a contract which Art. 248 of the Constitution impaired, and enjoined the City Council from designating any places in the City of New Orleans where slaughterhouses might be erected and maintained, "the Supreme Court of Louisiana had dissolved its said injunction and had decided that its monopoly had been validly repealed; on 23 November, 1881, said Crescent City Live Stock Landing and Slaughterhouse Company wickedly and maliciously, to injure and harass and ruin your petitioner, filed its bill of complaint in the Circuit Court of the United States, for the Eastern District of Louisiana, No. 9691 of the docket, asserting again its grant of a monopoly by Act 118, 1869, to be a contract, and so protected against repeal by the State, and on the 25th November, 1881, obtained on said bill of complaint against your petitioner, a restraining order, prohibiting the constructing, erecting or maintaining anywhere within the parishes of Orleans, Jefferson or St. Bernard, any stock landings, pens, slaughterhouses, &c., and notwithstanding the objection and protests of your petitioner, on 29th December, 1881, obtained an order for an injunction against your petitioner upon the said complainant giving bond, which by an order of 4th February, 1882, was fixed at Eight Thousand Dollars, and thereupon the said Crescent City Live Stock Landing and Slaughterhouse Company as principal and Bertrand Saloy as surety signed, executed and delivered their bond pursuant to the order of said United States Circuit Court, in favor of your petitioner for the sum of eight thousand dollars, by which they bound themselves to pay to your petitioner the sum of eight thousand dollars in case it should be finally decided that said injunction was wrongfully obtained, of which bond a duly certified copy is annexed and made a part of this petition and which bond was accepted and approved by the Court, and thereupon on 6th February, 1882, said Crescent City Live Stock Landing and Slaughterhouse Company obtained an injunction against your petitioner by which it was strictly enjoined from constructing or erecting or maintaining anywhere

within the limits of the parishes of Orleans, Jefferson and St. Bernard, any stock landings, yards, pens, sheds, slaughterhouses, abatoirs or other such structures or from conducting or carrying on anywhere within said parishes the business of stock landing or slaughtering, except at the slaughterhouses of the said Crescent City Slaughterhouse Company.

"That thereafter, to-wit: on 8th May, 1882, the said Circuit Court rendered a final decree perpetuating said injunction and your petitioner prosecuted its appeal to the Supreme Court of the United States, and thereafter on 5th May, 1884, the Supreme Court of the United States reversed the said decree of the Circuit Court, decided the injunction to have wrongfully issued, and directed the Circuit Court to dismiss the bill of complaint and this has been done and the decree is final. That by the illegal issuance and maintainance of said injunction for two years, five months and ten days your petitioner has been greatly damaged in the sum of seventy-three thousand dollars in loss of business, loss of credit, loss of profits, vexation, annoyances and expenses, besides being liable to five thousand dollars attorneys fees. That by reason of said injunction, the buildings nearly completed by your petitioner fell into decay and ruin, and petitioner's friends were driven off and discouraged and the property was sold under a mortgage and vendors privilege, to the great damage and loss of your petitionér.

Wherefore petitioner prays that "The Crescent City Live Stock Landing and Slaughterhouse Company, through Joseph Hernandez, President, and Bertrand Saloy, be cited to appear and answer this petition and be condemned in solido to pay your petitioner the sum of Eight Thousand Dollars, with 5 per cent. interest from judicial demand, and the said Company be condemned to pay your petitioner the further sum of Seventy-three Thousand Dollars damages with 5 per cent. interest from date of verdict and for trial by jury, and for costs, and for general relief.

(Signed) B. R. FORMAN,
Attorney for Petitioner.

COPY OF BOND ANNEXED TO AND MADE PART OF PETITION.
Filed May 28th, 1884.

The Crescent City Live Stock Landing and Slaughterhouse Co.
vs.
The Butchers' Union Slaughterhouse and Live Stock Landing Co.

No. 9691.
United States Circuit Court

UNITED STATES OF AMERICA.

Know all men by these presents, That we, the Crescent City Live Stock Landing and Slaughterhouse Company, by Joseph Hernandez, President thereof, as principal, and Bertrand Saloy as surety, are held and firmly bound, jointly and severally, unto the Butchers' Union Slaughterhouse and Live Stock Landing Company, in the sum of eight thousand dollars lawful money of the United States of America, to be paid to the said Butchers' Union Slaughterhouse and Live Stock Landing Company, its heirs, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly, by these presents, sealed with our seals and dated the 6th day of February, in the year of our Lord eighteen hundred and eighty-two.

Whereas, Upon due hearing of a motion of the complaint for an injunction *pendente lite* in a certain cause entitled the Crescent City Live Stock Landing and Slaughterhouse Company against the Butchers' Union Slaughterhouse and Live Stock Landing Company, defending in the Honorable the Circuit Court of the United States, for the Fifth Circuit, holding sessions in and for the Eastern District of Louisiana, No. 9691, the said Court, in said cause, allowed an injunction *pendente lite* to the extent and effect as prayed in said Bill of Complaint, upon complainant giving bond in favor of the said Butchers' Union Slaughterhouse and Live Stock Landing Company in the sum of eight thousand dollars.

Now the condition of the above obligation is, that we, the above bounden, the Crescent City Live Stock Landing and Slaughterhouse Company, by Joseph Hernandez, President thereof, and Bertand Saloy, surety, will well and truly pay to the said Butchers' Union Slaughterhouse and Live Stock Landing Company, the defendant in said injunction, all such damages as it may, or have

suffered in consequence of the said writ of injunction *pendente lite*, then recovery against us in this obligation shall be null and void, otherwise, to be in full force and effect. Eight words effaced before signing.

[SEAL] (Signed) J. HERNANDEZ, President.
[SEAL] B. SALOY.

Approved, signed, sealed and delivered in the presence of
(Signed) F. A. WOOLFLEY,
H. C. MICHEL.

EXCEPTION.

Filed June 12th, 1884.

Butchers' Union Slaughterhouse Co.
vs.
Crescent City Live Stock Landing and Slaughterhouse Co. } No. 11498.

Now come the defendants, by the undersigned counsel, and except to the petition of plaintiff, and to its right to have and maintain the action therein set forth, on the grounds following:

1st. Because the plaintiff, the Butchers' Union Slaughterhouse and Live Stock Landing Co., is not a corporation, but a partnership or association of persons, and has no right to sue in a common or firm name, but the names of all the members must be set forth, and they must all be joined as plaintiffs.

2nd. That if the plaintiff has a right to maintain the present suit in a corporate name which is denied, then the authority to bring the same has not been set forth, the president of the same not being authorized in law, or in fact, to prosecute a suit for a corporation, association or partnership.

3rd. If the foregoing exceptions be overruled and not otherwise, the defendants except that the said petition of plaintiffs does not set forth with such precision and distinctness as the law requires the damage or damages—the amount of which it seeks to recover.

Wherefore, defendants, the said Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy, pray that the aforesaid exceptions be maintained, and that the aforesaid petition be dismissed, and the claim thereon set forth be rejected.

(Signed) ROBERT MOTT,
Attorney for Defendant.

EXCEPTION OVERRULED.

Extract from the Minutes, Friday, November 21st, 1884, Present Hon. N. H. Rightor, Judge.

Butchers' Union Slaughterhouse Co.
vs.
Crescent City Slaughterhouse and Live Stock Landing Company.
No. 11,489.

The exception herein filed came up this day for trial, Robt. Mott for plaintiff in exception. B. R. Forman for defendant in exception. When after hearing pleadings and counsel, for the reasons orally assigned by the Court, it is ordered that said exception be overruled.

ANSWER OF DEFENDANTS.

Filed November 27th, 1884.

Butchers' Union Slaughterhouse and Live Stock Landing Company
vs.
Crescent City Live Stock Landing and Slaugterhouse Company.
No. 11,489.

Now comes the defendants by their undersigned attorney, and for answer to the petition filed in this suit against them say, that they reserve the exceptions heretofore filed by them to the petition and right of the plaintiff to have and maintain their present action, and aver and set forth and insist upon the same and for answer say, that they deny generally all the allegations of plaintiff's petition tending in any way to recover of them or either of them any sum of money whatsoever; and defendants further answering say, that on or about the 13th November, 1880, Stoddart Howell instituted suit against the said plaintiffs, No. 1257, on the docket of the Civil District Court for the parish of Orleans, and obtained an injunction restraining the said plaintiff from erecting or maintaining a slaughterhouse with the appliances thereof and the incidents thereunto belonging; which injunction remained in force and was effective and restrained the said plaintiffs as therein set forth, until the 15th day of May, 1882, when the same was set aside and annulled by a judgment of Court, which suit and proceedings therein are referred to and the same is made part hereof.

That afterwards, to-wit: in the suit No. 7143 on the docket of the said Civil District Court, the said Butchers' Union Slaughterhouse and Live Stock Landing Company claimed of the said Howell and Saloy, his security, damages for injury alleged to have been inflicted on them in consequence of the issuance and maintainance of the injunction in the suit No. 1257, in the said Civil District Court for the parish of Orleans, and set forth and averred that the said Howell was but the creature and representative of the respondent, the Crescent City Live Stock Landing and Slaughterhouse Company, who was the real party in interest and who furnished, in the person of B. Saloy, the security on the bond.

And in that case, the said plaintiffs recovered a verdict and judgment against said B. Saloy for five thousand dollars, interest and costs; and against said Howell, a verdict and judgment for thirteen thousand, eight hundred and ten dollars, interest and costs which judgment, so far as said Howell is concerned, is exigible and enforcible by execution against his property, and the said plaintiffs have elected to sue for and recover damages for the period of time embraced in this present suit against said Howell and Saloy, and cannot recover the same damages against those respondents, which suit, No. 7143 is annexed as part of this answer.

And respondents deny that any damage whatever was inflicted on the plaintiffs by an injuncton obtained by them against the said plaintiffs.

Wherefore, respondents pray that plaintiff's petition be dismissed, and the claim therein set forth be rejected, and for final judgment against them.

(Signed) ROBERT MOTT,
Attorney for Defendants.

EMPANNELING JURORS.

Extracts from the Minutes, Monday, February 9th, 1885.

Present the Honorable N. H. Rightor, Judge.

Butchers' Union Slaughterhouse Co.
vs.
Crescent City Slaughterhouse Co.
} No. 11489.

This cause came up this day for trial by jury. B. R. Forman and E. H. McCaleb for plaintiff; R. Mott and E. D. White for defendant.

The following jurors were called to the book and sworn to try this case :

1. Paul Vigo,
2. William W. Hamilton,
3. N. Wagner,
4. Ignace Biri,
5. Jacob Werner,
6. Lewis T. Turner,
7. John R. Todd,
8. L. Warman,
9. John Schmidt,
10. Charles Tula,
11. Charles Turk,
12. P. D. Gonzall.

The jury being complete, the Court appointed Paul Vigo as foreman thereof, and the trial of the case was proceeded with, and after hearing pleadings and evidence, the hour of adjournment having arrived, said cause was ordered to be continued to to-morrow, 10th inst., at 11 o'clock A. M., for further trial.

Minutes entered on trial, February 10th, 1885.

Counsel for plaintiff now declares that the evidence and testimony offered on yesterday, in relation to the value of the solicitor's fee for services rendered in the case of the Crescent City Live Stock Landing and Slaughterhouse Company vs. the Butchers' Union Slaughterhouse Co., in the United States Circuit Court and in the Supreme Court of the United States, was offered for the purpose of showing damages for malicious prosecution, and plaintiff does not claim on the injunction bond for any such services.

VERDICT.

New Orleans, February 13th, 1885.

Verdict for plaintiff and against defendants and Bertrand Saloy, surety on the bond, six thousand, five hundred and eighty-eight dollars and thirty-seven cents, ($6,588 37) with interest.

Verdict for plaintiff against defendants, under the plea of malicious prosecution, in the sum of twelve thousand, five hundred dollars ($12,500 00) damages, and the further sum of two thousand five hundred dollars ($2,500 00) attorneys' fees.

(Signed) PAUL VIGO, Foreman.

JUDGMENT.

Rendered February 24th, 1885.

Butchers' Union Slaughterhouse and Live Stock Landing Company
vs.
Crescent City Live Stock Landing and Slaugterhouse Company.
No. 11,489.

In this case, the Court considering the verdict of the jury herein rendered and duly recorded, it is ordered, adjudged and decreed that there be judgment in favor of plaintiff, the Butchers' Union Slaughterhouse and Live Stock Landing Company, against defendants, the Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy, surety on the injunction bond, in solido, for the sum of six thousand, five hundred and eighty-eight dollars and thirty-seven cents, ($6,588 37), with legal interest thereon, from judicial demand, until paid.

It is further ordered, adjudged and decreed that there be further judgment in favor of said plaintiff, the Butchers' Union Slaughterhouse and Live Stock Landing Company, and against defendant, the Crescent City Live Stock Landing and Slaughterhouse Company, for the sum of twelve thousand, five hundred dollars, ($12,500 00), and for the further sum of two thousand, five hundred dollars, ($2,500 00), attorney's fees and costs of suit.

Judgment rendered February 24th, 1885.

Judgment signed March, 1885.

(Signed) N. H. RIGHTOR, Judge.

RULE FOR A NEW TRIAL.

Filed February 24th, 1885.

Butchers' Union Slaughterhouse and Live Stock Landing Company
vs.
Crescent City Slaughterhouse and Live Stock Landing Company.
No. 11,489.

On motion of Robert Mott and E. D. White, of counsel for defendant, and on suggesting to the court that the verdict and

judgment herein are contrary to law and evidence, for the following reasons, among others, viz :

1st. Because the judgment and verdict are based on the conclusion that the opinion and decree in favor of the plaintiff in the suit in the United States Circuit Court was not proof of probable cause.

2nd. Because in disregarding said opinion and decree of the Circuit Court and in failing to give it effect for the purpose of the questions of the existence of probable cause, the verdict and judgment deprives mover of a right guaranteed him under the laws of the United States or a matter of law, the decree of the Circuit Court of the United States, and deprives mover of an immunity existing under the Constitution and Laws of the United States.

3rd. Because the existence of probable cause was conclusively shown by the opinion and decree of the Circuit Court of the United States, and the declaration to the jury that the said decree was unwarranted and unprecented, has for its effect to lead the jury to disregard said decree and the probable cause necessarily resulting from it.

4th. That the effect of the verdict and judgment is to deprive the decree of the Circuit Court of one of its necessary remittants to hold it of less efficacy than a decree of a State Court and thus practically to mulct defendant in damages in consequence of the action of the Circuit Court of the United States.

5th. That in so far as said verdict allow damages on the bond, it is unwarranted and excessive.

6th. That a question of fact, in so far as it allows damages for a malicious prosecution, said judgment and verdict is unsupported by the proof.

It is ordered that plaintiff show cause on Friday the day of February, 1885, why the verdict and judgment should not be set aside and a new trial be granted.

MOTION FOR A NEW TRIAL OVERRULED.

Extracts from the Minutes, Saturday, March 7th, 1885.

Present the Honorable N. H. Rightor, Judge.

In the matter of the motion, filed in this cause for a new trial, for the reasons orally assigned by the court, it is ordered that said motion be overruled.

GENERAL COMMENTS ON BILLS OF EXCEPTIONS—EXCEPTIONS Nos 1 and 2.

Filed March 7th, 1885.

Comments upon the Bills of Exception in general :

The day before this protracted suit was submitted to the jury, the Judge requested the counsel for both parties to furnish him with written memoranda of the charges they might desire him to make. This request was complied with.

Having examined all the points and authorities submitted by both, plaintiffs and defendants, the Judge, on the conclusion of argument by counsel, delivered oral instructions to the jury, charging on all the points of law in the case. No request was made for a written charge and no exceptions taken to the charges made, except the one formulated in Bill of Exceptions No. 2, after the close of the Judge's instructions to the jury. He refused to make a certain charge requested by plaintiff's counsel, and a multitude of others requested by defendants. He did so, either because the charges were superfluous, or calculated to mislead or confuse, inapplicable, or not justified by law. Be that as it may, the facts are all before the Supreme Court, and they can see, whether or not, the verdict of the jury is a correct one. In my judgment, it is.

(Signed) N. H. RIGHTOR, Judge.

No special comments, except on Bills of Exceptions Nos. 1 and 2.

BILL OF EXCEPTIONS No. 1.

On behalf of Defendants. Filed March 7th, 1885.

Butchers' Union Slaughterhouse and Live Stock Landing Company
vs.
Crescent City Live Stock Landing and Slaughterhouse Company.

No. 11,489.
Civil District Court.

Be it remembered that on the trial of this case the Judge in charging the jury stated to them: I am the judge of the law, you are not, you have neither the legal or moral right to disregard the law as I give it to you.

To which statement counsel for defendants excepted and tendered this bill of exceptions in open Court, in the presence of the opposing counsel, in order to test the verity of its contents.

Per curiam I said to the jury in commenting upon the defendants' request that, I charge the jury that they were the judges of the law as well as of the facts. I am the judge of the law, you are not, you have neither the legal nor the moral right to disregard my instructions though you have the power to do so.

That doctrine has been substantially taught by the Supreme Court, and it is inconceivable that the law maker should have made it the duty of the judge to propound and declare the law to the jury and in the same breath to tell to them they were legally and morally at liberty to treat his instructions with contempt. I cannot believe that it was meant to degrade the judge from his responsible ministry as an expounder of the law to the part of a superfluous and irresponsible declaimer to an empannelled mob.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 2.

On behalf of Defendants, Filed March 7th, 1885.

Be it remembered, that on the trial of this case the Court in charging the jury, after stating the fact that the decree of the Judges of the Circuit Court of the United States was presented by the defendants as probable cause for the institution of the suit complained of, added.

"As to this decree, gentlemen of the jury, of Judge Pardee and Judge Billings and their opinion, all I can say is, that it was unwarranted and unprecedented and I cannot understand how they rendered it. However, you must judge whether it constitutes probable cause or not, although my opinion is that it was both unwarranted and unprecedented." To which statement, counsel for defendants objected on the ground that it was a comment on the facts by the judge to jury, which was unwarranted and tendered this their bill of exceptions to such comment in open court and in presence of opposing counsel and the judge.

Per curiam, the above recital is correct except as to the use of the words "unwarranted and unprecedented." The words used, (and they were premeditated lest I might pass the limits of judicial decorum under the impulse of what I knew to be a just indignation), were " remarkable and extraordinary." There is not a Louisiana judge who remembers the monstrous rulings of Judge

Durell and his remarkable successor who would think of characterizing any action of the Federal Court in this city as "unprecedented."

I described the action of the Federal Court as "remarkable and exraordinary," because it set at naught the decisions of the State Courts of Louisiana, of the Supreme Court of Louisiana, set at defiance the positive mandate of the State Constitution and because it was held by the unanimous Supreme Court of the United States to have involved a usurpation of jurisdiction, such action was truly "remarkable and extraordinary" though not without deplorable precedent.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 3.

On behalf of Defendant, Filed March 7th, 1885.

Be it remembered, that on the trial of this case the defendants requested the judge to charge the jury as follows :

That the burden of proof is on the plaintiff in a suit for damages to establish the want of probable cause and the existence of malice in the suit complained of, and the evidence must make out a strong case of mere malice and entire want of probable cause, to render the defendant liable. If malice be proven, and there be probable cause, the defendant is necessarily entitled to a judgment; both malice and want of probable cause must co-exist to entitle the plaintiff to recover.

Which charge, the judge refused to give as unsound in law. To which ruling, counsel for defendants excepted and tendered this their bill of exceptions thereto in open court, and in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 4.

Of behalf of Defendants, Filed March 7th, 1885.

Be it remembered that on the trial of this case, the defendants requested the Judge to charge the jury as follows :

"That the malice spoken of in a suit for malicious prosecution, means a wish to injure, united to the knowledge that the plaintiff has no just cause of action. Where the plaintiff believes that he has a legal right, which he is entitled to test judicially, it

is immaterial whether he had or had not the wish to injure the defendant by the judicial assertion of such right."

Which charge the Judge refused to give as unsound in law, and the defendants excepted to said ruling, and tendered this their bill of exceptions thereto, in open court, and in the presence of opposing counsel and the Judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 5.

On behalf of defendants. Filed March 7th, 1885.

Be it remembered, that on the trial of this case, the defendants requested the Judge to charge the jury as follows:

Even therefore if malice be proven it will not entitle the plaintiff to recover unless want of probable cause be also proven.

Which charge the judge refused to give, as unsound in law. To which ruling counsel for defendant excepted and tendered this their bill of exceptions thereto in open court and in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 6.

On behalf of Defendants, Filed March 7th, 1885.

Be it remembered, that on the trial of this case the defendants asked the judge to charge the jury as follows:

To support probable cause it is not requisite that the right asserted should be certain. On the contrary, there may be uncertainty as to the result of the litigation, and probable cause yet exist.

Which charge the judge refused to give on the ground that it is unsound in law. To which ruling counsel for defendants excepted and tendered this their bill of exceptions thereto in open court, in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 7

On behalf of Defendants, Filed March 7th, 1885.

Be it remembered, that on the trial of this case the defendants requested the judge to charge the jury as follows:

The existence of probable cause is established by the fact that counsel in good standing advised the plaintiff that he was entitled

to the right asserted by him, and that the court, of first instance, reached the same conclusion after a full hearing and discussion of the legal question involved. These circumstances concurring preclude there being no probable cause, unless it is proven that the judgment of the judge was corruptly obtained.

Which charge the judge refused to give on the ground that it is unsound in law. To which ruling counsel for defendants excepted and tendered this their bill of exceptions thereto in open court in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 8.

On behalf of Defendants. Filed March 7th, 1885.

Be it remembered that on the trial of this case, the defendants requested the judge to charge the jury as follows:

Where a right is sought to be enforced in a civil suit and the plaintiffs' title to that right depends upon the constitution of a law, and where judges, after hearing both parties, find the law with plaintiff and decree accordingly, such finding is construction as to probable cause, although the opinion of the judge may be reversed on an appeal to a higher court.

Which charge the judge refused to give on the ground that it is unsound in law. To which ruling counsel for defendants excepted and tendered this their bill of exceptions thereto in open court, in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 9.

On behalf of Defendants. Filed March 7th, 1885.

Be it remembered that on the trial of this case, the defendants requested the judge to charge the jury as follows:

As exemplification of the rule that the finding of a court as to the existence of plaintiffs' right although subsequently reversed as a matter of law conclusive as to the existence of probable cause, it may be stated that proof that a jury deliberated long before reaching a conclusion, although their finding was reversed on appeal would be competent to show probable cause.

Which charge the judge refused to give, on the ground that it is unsound in law. To which ruling counsel for defendants ex-

cepted and tendered this their bill of exceptions thereto in open court, in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 10.

On behalf of Defendants. Filed March 7th, 1885.

Be it remembered that on the trial of this case, the defendants requested the judge to charge the jury as follows:

As a further exemplification of what constitutes probable cause, proof that a verdict was rendered in favor of plaintiff.

Which verdict was reversed by the Supreme Court, because the jury mistakenly found the facts would be conclusive proof of the existence of probable cause and debar recovery in a suit for malicious prosecution, on the ground that it is unsound in law.

To which ruling counsel for defendants excepted and tendered this their bill of exceptions thereto in open court, in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No 11.

On behalf of defendants. Filed March 7th, 1885.

Be it remembered that on the trial of this case, the defendants requested the judge to charge the jury as follows :

A plaintiff, whose asserted right was conferred by an act of legislature and has been in force for a number of years, has a right to test the legality of a subsequent repeal of said right, when the validity of such repeal or modification has not been finally settled, and the plaintiff is advised by competent counsel that the repeal is invalid. In such a case the plaintiff has probable cause for asserting his rights and instituting an action for such purpose. If in the action instituted, the lower court being the Circuit Court of the United States, presided over by two judges, render a judgment in favor of the plaintiff, the existence of probable cause for instituting such suit is demonstrated by the finding of the Judges of the Circuit Court, although their finding was reversed on appeal.

Which charge the judge refused to give on the ground that it was unsound in law, to which ruling, counsel for defendants ex-

cepted, and tendered this their bill of exceptions thereto, in open court, in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 12.

On behalf of Defendants, Filed March 7th, 1885.

Be it remembered, that on the trial of this case the defendants requested the judge to charge the jury as follows:

"As a further exemplification of what constitutes probable cause, where a committing magistrate examines a case and finds facts and law to commit the prisoner, such commitment after full hearing is conclusive of the existence of probable cause, although subsequently, the action of the committing magistrate was reversed by a higher court.

Which charge the judge refused to give, on the ground that it was unsound in law. To which ruling counsel for defendants excepted and tendered this their bill of exceptions thereto in open court in the presence of opposing counsel and the judge.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 13.

On behalf of Defendants, Filed March 7th, 1885.

Be it remembered, that on the trial of this case the defendants counsel requested the court to charge the jury. That plaintiff in the suit complained of having submitted his rights to the Circuit Court of the United States, which Court, both the Circuit and District Judges sitting, had found that he was entitled on a matter of law to the right claimed. That such finding although subsequently reversed on appeal by the Supreme Court of the United States, constituted conclusive proof of the existence of probable cause and have debarred recovery of damages for a malicious prosecution.

Which charge the court refused, stating in so doing that the jury could, if it chose so to do, consider that proof of probable cause resulted from the opinion and decree of the Circuit Court of the United States although said opinion and decree, in the opinion of this court, was unwarranted and unprecedented. By which ruling defendants excepted and tendered this their bill of excep-

tions in open court in the presence of the opposing counsel, which is signed by the court to the verity of its contents.

(Signed) N. H. RIGHTOR, Judge.

BILL OF EXCEPTIONS No. 14.

On behalf of Defendants. Filed March 7th, 1885.

Be it remembered that on the trial of this cause, after the court had charged the jury and after it had refused the written requests to charge, which had been by the requests of the court, handed in, which written requests are embraced in the bill of exceptions numbered from 1 to 13, the defendants' counsel asked the court permission to read them to the court, in the presence of the jury, in order that if any of them were refused, because considered as included in the charge as given by the court, the court might so instruct the jury, thus enabling the jury to understand that the charges were refused not because unsound in law, but because the court had already given them in its charge.

Which request the court refused, saying that the charges asked for could not be read in the presence of the jury, that they had been refused by the court, and the court would not permit them to be read in the presence of the jury or allow the jury to hear them, to which ruling the defendants' counsel excepted and tendered this his bill of exceptions in open court, after submission to opposing counsel, this bill being signed by the court in order to test the verity of the contents.

(Signed) N. H. RIGHTOR, Judge.

MOTION FOR A SUSPENSIVE APPEAL.

Filed March 17th, 1885.

And entered on the Minutes of the same day.

Butchers' Union Slaughterhouse and Live Stock Landing Company
vs.
Crescent City Live Stock Landing and Slaughterhouse Co.
No. 11489.

On motion of Robt. Mott and E. D. White, attorneys for the defendants, on suggesting that there is error to their prejudice, and that the defendants are irreparably injured by the final judgment

against them in this case on the twenty-fourth day of February, 1885, and signed on the 7th day of March, 1885. It is ordered that the said defendants, the Crescent City Live Stock Landing and Slaughterhouse Company, and Bertrand Saloy, be allowed a suspensive appeal to the Supreme Court of Louisiana, holding session at New Orleans, returnable on the third Monday of April next, on giving bond and security, and according to law.

APPEAL BOND.

Filed March 18th, 1885.

The Butchers' Union Slaughterhouse and Live Stock Landing Co.
vs.
The Crescent City Live Stock Landing and Slaughterhouse Co.

No. 11,489.

Know all men by these presents, That we, the Crescent City Live Stock Landing and Slaughterhouse Company, as principal, and Emile Gauche and Bertrand Saloy as securities, are held and firmly bound unto W. J. McGeehan, Clerk of the Civil District Court for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of thirty-five thousand dollars; for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly, by these presents, sealed with our seals, and dated in the City of New Orleans, on this 17th day of March, in the year of our Lord one thousand, eight hundred and eighty-five.

Whereas, The above bounden Crescent City Live Stock Landing and Slaughterhouse Company, this day filed a motion of appeal from a final judgment rendered against them in the suit of the Butchers' Union Slaughterhouse and Live Stock Landing Company, No. 11,489, of the Civil District Court for the Parish of Orleans, on the 24th day of February, 1885, and signed on the 7th day of March, 1885.

Now the condition of the above obligation is such, that the above bounden. the Crescent City Live Stock Landing and Slaughterhouse Company, shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or

personal, if they be cast in the appeal, otherwise that the said B. Saloy and Emile Gauche shall be liable in their place.

[SEAL] (Signed) J. HERNANDEZ, President.

[SEAL] E. GAUCHE,

for ten thousand ($10,000 00) dollars.

[SEAL] B. SALOY.

Signed, sealed and delivered in the presence of

(Signed) ROBERT MOTT.

APPEAL BOND.

Filed March 18th, 1885.

Butchers' Union Slaughterhouse and Live Stock Landing Co.
vs.
Crescent City Live Stock Landing and Slaughterhouse Co.
No. 11489.

Know all men by these presents, That we, Bertrand Saloy, as principal, and Joseph Hernandez, as surety, are held and firmly bound unto W. J. McGeehan, Clerk of the Civil District Court for the parish of Orleans, his successors, executors, administrators and assigns, in the sum of twelve thousand dollars; for the payment whereof, we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seal, and dated in the City of New Orleans, on this seventeenth day of March, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas the above bounden, Bertrand Saloy, this day filed a motion of appeal from a final judgment rendered against him in the suit of the Butchers' Union Slaughterhouse and Live Stock Landing Company against the Crescent City Live Stock Landing and Slaughterhouse Company and B. Saloy, No. 11,489 of the Civil District Court for the parish of Orleans, on the 24th day of February, 1885, and signed on the 7th day of March, 1885.

Now the condition of the above obligation is such that the above bound B. Saloy shall prosecute his appeal and shall satisfy whatever judgment may be rendered against him or that the same

shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal, otherwise that the said Joseph Hernandez shall be liable in his place.

[SEAL] (Signed) B. SALOY,
[SEAL] J. HERNANDEZ.

Signed, sealed and delivered in the presence of

APPEAL BOND.

Filed March 19th, 1885.

Butchers' Union Slaughterhouse and Live Stock Landing Company
vs.
Crescent City Live Stock Landing and Slaughterhouse Company
No. 11489.

Know all men by these presents, That we, the Crescent City Live Stock Landing and Slaughterhouse Company, as principal, and J. Hernandez, E. Gauche, Louis Ruch and J. N. Avegno, as sureties, are held and firmly bound unto W. J. McGeehan, Clerk of the Civil District Court for the parish of Orleans, his successors, executors, administrators and assigns, in the sum of thirty-five thousand dollars: for the payment whereof we bind ourselves, our heirs, executors and admistrators, firmly by these presents, sealed with our seal, and dated in the City of New Orleans on this seventeenth day of March, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas, The above bounden Crescent City Live Stock Landing and Slaughterhouse Company this day filed a motion of appeal from a final judgment rendered against them in the suit of the Butchers' Union Slaughterhouse and Live Stock Landing Company, vs. the Crescent City Live Stock Landing and Slaughterhouse Company et als., No. 11,489, of the Civil District Court for the Parish of Orleans, on the 24th day of February, 1885, and signed on the 7th day of March, 1885.

Now the condition of the above obligation is such that the above bound Crescent City Live Stock Landing and Slaughterhouse Company shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or

personal, if they be cast in the appeal, otherwise that the said J. Hernandez, E. Gauche, Louis Ruch and J. N. Avegno, shall be liable in their place.

[SEAL]	(Signed)	J. HERNANDEZ, President.
[SEAL]	"	J. HERNANDEZ, for $15,000.
[SEAL]	"	E. GAUCHE, for $10,000.
[SEAL]	"	LOUIS RUCH, for $7,500.
[SEAL]	"	J. N. AVEGNO, for $2,500.

Signed, sealed and delivered in the presence of
(Signed) ROBERT MOTT.

SUPREME COURT OF THE STATE OF LOUISIANA.

Clerk's Office, New Orleans, Dec. 14th, 1885.

Butchers' Union Slaughterhouse and Live Stock Landing Co.
vs.
Crescent City Live Stock Landing and Slaughterhouse Co.
No. 9461.

Appeal from the Civil District Court, Parish of Orleans.

MR. FENNER, delivered the Opinion and Decree of the Court in the words and figures following, to-wit:

This is an action by the plaintiff corporation to recover damages for injury sustained in consequence of the malicious prosecution of a civil suit against it by the defendant and of the wrongful issuance of an injunction therein.

A resumé of the events preceeding and attending the institution of the suit referred to will facilitate the comprehension and disposition of the issues of law and fact involved.

By an Act of the Legislature, No. 118 of 1869, the State granted to the Crescent City Slaughterhouse and Live Stock Landing Company, a monopoly or exclusive right of carrying on the business of live stock landing and slaughtering within the parishes of Orleans, Jefferson and St. Bernard, for a period of twenty-five years.

The Consitutional Convention of 1879, revoked this grant, in so far as its exclusive or monopolistic features are concerned, by adopting Articles 248 and 258 of the present Constitution of the State.

Article 258 declared that "the monopoly features in the charter of any corporation now existing in this State" (with certain exceptions not pertinent to this case) "are hereby abolished."

Article 248 provided that "the police juries of the several parishes, and the constituted authorites of all incorporated municipalities of the State, shall alone have the power of regulating the slaughtering of cattle and other live stock within their respective limits, provided, no monopoly or exclusive privilege shall exist in this State, nor such business be restricted to the land or houses of any individual or corporation; providing the ordinance designating the place for slaughtering shall obtain the concurrent approval of the Board of Health, or other sanitary organization."

If these provisions of the organic law of the State were valid, it is clear that the exclusive privilege granted to defendant by Act 118 of 1869, was swept out of existence; that the City of New Orleans had the undoubted right, with the approval of the Board of Health, to pass regulations and establish localities for the conduct of this business within her limits; and that any person complying with such regulations would have the absolute right to establish and conduct the business within the limits fixed. The only possible ground upon which the defendant corporation could oppose the right of the City to pass regulations and the right of persons complying therewith to carry on the business, laid in the denial of the validity of the constitutional provisions, because impairing the obligations of its contract embodied in Act 118 of 1869, and thus conflicting with the Constitution of the United States.

The questions involved were serious and important. Defendant's right to assert judicially, the validity of his contract and to resist, by all legal remedies, the execution of any state laws which impaired it was unquestioned. The question involved was federal in its nature and the Courts of the State and (perhaps) of the United States were equally open to it, for the vindication of its alleged right; and in either forum, it was entitled to appeal to the Supreme Court of the United States for the final and conclusive settlement of the question.

Shortly after the adoption of the Constitution, certain butchers petitioned the Council of the City of New Orleans to take action with regard to establishing limits and regulations for slaughtering.

The matter was referred to the City Attorney who reported an opinion favorable to the validity of the constitutional provisions and to the right of the City to act in the premises.

Thereupon defendant conceived that the time had come for it to invoke the aid of the courts to protect its alleged contract rights. It then exercised its election as between the Federal and State Courts and concluded to submit its claims primarily to the latter

Accordingly on February 5th, 1880, it filed a petition in the Fifth District Court for the parish of Orleans, against the City of New Orleans, alleging that the latter had entertained the petition of the butchers and was about to designate places for slaughtering other than defendant's own slaughterhouse; asserting its exclusive privilege under a contract protected by the Constitution of the United States; asserting the nullity of the provisions of the constitution of the State, in so far as they impaired or interfered with said contract and praying for an injunction restraining the City "from ever designating a place or places for the landing, yarding, sheltering or slaughtering animals, &c., other than at the slaughterhouses and premises of petitioner."

The City of New Orleans answered substantially setting up the provisions of the State Constitution as the warrant for the action which she was about to take, in designating slaughtering places within her limits; asserting their validity and denying that they impaired any contract right of petitioner which was protected by the Constitution of the United States.

The issue thus joined in a competent forum of the company's own selection, passed regularly to trial and determination in the District Court, was appealed to this Court, and after full hearing in May, 1881, we rendered an opinion and decree wherein we considered all the positions and arguments of the parties and held that Act No. 118 of 1869 did not create a contract protected from impairment by the Constitution of the United States, but that the rights therein granted being related to subjects affecting the public health, were revocable at the will of the sovereign, and we affirmed the judgment of the lower court which was in favor of the city, and rejected the demand of the company.

It is important to estimate the scope and effect of this decision. It was an authoritative judicial determination, by a competent

court, of questions submitted to it at the instance of the company itself. In denying the rights claimed by the company, and in affirming the right of the City to regulate slaughtering within her limits and to designate places for the conduct of such business, it necessarily affirmed the right of persons complying with such regulations to transact that business at such places and denied the right of this company to interfere with them. If there was error in that decision, that error could be corrected by one tribunal only, the Supreme Court of the United States, until the questions involved had been determined differently by that high tribunal, the decision of this Court was entitled to be accepted as the law by this litigant.

Technical principles of *lis pendens* and *res judicata* might not debar the company from prosecuting another suit against a different party involving the same subject matter; but if such suit rested exclusively upon the assertion of rights which this Court had directly determined that the company did not possess, it could find no protection against the charge of being a malicious prosecution, save in the production of a decision of the Supreme Court of the United States, holding that our opinion was error.

To proceeds with the facts of this case: shortly after the adoption of the constitution the plaintiff in the present case had been organized as a corporation, for the purpose of conducting a slaughterhouse business, and in anticipation of action by the City and Board of Health, under Article 248, had bought land and commenced the erection of buildings for the purpose.

On the 17th of November, 1881, the City Council had passed certain ordinances designating places for the slaughtering of animals within the city limits, and including therein the point at which the Butchers' Union Company had located their building, and these ordinances were under consideration by the Board of Health, and actually received the approval of that body on November 25th.

But anticipating the action of the Board of Health, on the 23rd of November, the Crescent City Company filed, in the United States Circuit Court, a bill in equity against the Butchers' Union Company, wherein it set forth that the City Council had passed the ordinances; that the Board of Health would approve them; that "thereupon the Butchers' Union Company, unless restrained

therefrom by a writ or injunction, will proceed to construct and erect slaughterhouses, etc., and there conduct and carry on the business of live stock landing, slaughtering, etc."

It thus alleged the existence of every condition essential, under the prior decision of this Court, to secure to the Butchers' Union Company and others, the absolute right to prosecute the business without interference by the complainant, and then proceeded to propound the identical grounds which had been considered and overruled by this Court, and prayed for a writ of injunction restraining the Butchers' Union Company from proceeding with the construction and maintenance of buildings, etc., and from carrying on anywhere within the parishes of Orleans, Jefferson and St. Bernard, the business of stock landing and slaughtering, except at complainants own premises.

The judge of Circuit Court entertained the bill, granted a rule for an injunction *pendente lite*, heard the parties, reviewed and reversed our opinion, issued the preliminary injunction, subsequently heard the cause or demurrers and pleas and rendered a final decree perpetuating the injunction.

This decree was carried by appeal to the Supreme Court of the United States, and in April, 1884, that Court reversed it, referring to and adopting the views which had been expressed by this court in the case already referred to.

The present action, as already stated, is for the recovery of damages sustained in consequence of the alleged malicious prosecution of the above suit and of the wrongful issuance of the injunction.

Was it a malicious prosecution?

To sustain this charge it is necessary to show: 1st. That the suit had terminated unfavorably to the prosecutor; 2nd. That in bringing it the prosecutor had acted without probable cause; 3rd. That he was actuated by legal malice, i. e., by improper or sinister motives. The above three elements must concur.

The existence of the first is undisputed.

We are bound to hold that there was entire absence of probable cause. The suit involved absolutely nothing but questions of law.

Those identical questions had been submitted to this Court by this very prosecutor, in a case precisely analogous and had been determined against him. It was thus authoritatively advised what the

law was. If it was dissatisfied with this opinion, its remedy was clear by appeal to the United States Supreme Court and it had actually availed itself of that remedy on writ of error which was pending and undetermined when the suit was brought. It must be carefully observed that though the Butchers' Union Company was not technically a party to the suit against the City, the questions of right between it and the Crescent City Company were as directly involved as if it had been a party. If the City had the right to regulate slaughtering within her limits and to designate places for its lawful conduct, obviously persons complying with such regulations had the right to transact the business. If she had not that right, no person could lawfully slaughter elsewhere than at the old company's slaughterhouse.

But it is claimed that the prosecutor acted under the advice of counsel learned in the law. That is certainly true and would ordinarily protect. But here the client was in possession of the opinion of this Court on the very point, in its own case, involving the same subject matter.

It had no need for advice of counsel. That advice was simply that the opinion of this Court was error. Counsel had the undoubted right to entertain such opinion and so to advise its client; but the only lawful remedy under such advice consisted in an appeal to the United States Supreme Court.

If it chose to act otherwise on such advice, it acted at its peril and can take no protection therefrom. The only lawful action it could take under such advice had been already taken in the writ of error from the United States Supreme Court. Particularly does this apply here, when one of the counsel, and the only one who testifies on the subject of advice, was himself a member and a director in the defendant company. We mention this with no intention to reflect upon the able and highly respected counsel, but simply to bring home to defendant the fullest knowledge and comprehension of the legal *status* of the case.

Nor does the decision of the Judges of the Circuit Court of the United States afford a better shield. They are not vested with authority to revise or reverse the decisions of this Court. The effect of their action was not only to overrule our opinion, but practically to reverse our decree. For of what avail was the right decreed by us in favor of the City, to regulate slaughtering and

to designate places therefor, if persons complying with those regulations, could be enjoined by the United States Circuit Court from conducting the business at such places. It is obvious that the entire subject matter of the injunction suit was embraced in and disposed of by our decree, and that though the Butchers' Union Company was not nominally a party, its rights and those of all persons to transact the business of slaughtering in this city being subsidiary to and springing directly from the right of the City, were necessarily involved in and protected by our decree.

With the utmost respect for the Judges of the Circuit Court, and without disputing their right to decide such questions according to their own views, we are bound to say that their proceedings in this suit are not in accord with the views often expressed by the Supreme Court of the United States and carefully observed by us touching the relations between the co-ordinate jurisdictions exercised by the Federal and State Courts.

We refer to Peet vs. Jenness, 7 How. 612; Taylor vs. Carryl, 20 How. 595; Taylor vs. Taintor, 16 Wall. 392; Memphis vs. Dean, 8 Wall. 64.

As evidence of the scrupulous respect which this Court observes towards the rightful jurisdiction of the Circuit Court, we refer to State ex rel. Newman vs. Burke, 35 Ann. 185. We make these remarks in no other spirit than from a desire to promote in future the observance (to use the language of the Supreme Court of the United States in Taylor vs. Carryl), "of such principles and and methods of proceedure as shall serve to conciliate the distinct and independent tribunals of the States and of the Union, so that they may co-operate as harmonious members of a judicial system co-extensive with the United States and submitting to the paramount authority of the same constitution, laws and federal obligations."

But the ground on which we rest our conclusion on the question of probable cause is that our decree in the suit to which the defendant corporation was a party, was, until reversed, the law to it so far as the subject matter thereof is concerned; that the prosecution of a suit which had no foundation except in the assumption that our decree was not law was without probable cause; and that neither the advice of counsel nor the opinion of judges of a co-

ordinate court that our decree was error, could furnish any cause whatever for the prosecution of such a suit.

On the question of legal malice the entire absence of probable cause is an important factor in its solution, but the record abundantly suggests and sustains the existence of the dominant motive which prompted the suit, viz: the desire and determination to maintain its enjoyment of a profitable monopoly and to prevent competition therein, regardless of questions of legal rights as expounded by the decree of this Court, and without awaiting the correction of any error which might exist therein by the only tribunal competent to do so. The force of this motive is apparent from the enormous profits and dividends earned and declared by the company; from the fact that the market value of its stock rose between ten and fourteen dollars a share on the issuance of the injunction by the Circuit Court, and fell about as much when the United States Supreme Court reversed the decree; and that shortly after the latter decision the company reduced its tariff of charges by about twenty-five per cent.

But the motive is rendered yet more apparent by the fact that when the appeal from this Court was about to be reached on the docket of the United States Supreme Court, the company dismissed it, thus postponing the decision until the later appeal in the injunction case could be reached.

Such a motive constitutes legal malice, and completes the elements necessary to sustain the charge of malicious prosecution.

We conclude, that plaintiff is entitled to recover the damages occasioned to it, either by the wrongful issuance of the injunction, or by the malicious prosecution of the suit.

The effort of defendant to avert the liability on the ground that plaintiff was already enjoined in other proceedings before the State Courts cannot avail, because, under our decision, in 33 Ann. 930, these injunctions could have been released on bond. It was only the injunction in the Federal Court that placed it out of the power of the plaintiff to prosecute its enterprise. Nor is any inference hostile to plaintiff's claim to be drawn from its delay or failure to bond, because the Federal suit rendered the bonding useless.

The estoppel opposed to plaintiff's claim as resulting from its judicial allegations in the suit against Howell, et al., decided and

reported in 37 Ann. 280, must be overruled. It is true that in the suit referred to the plaintiff did allege that part of the damage now claimed resulted from the injunction issued in the suit of Howell vs. The Butchers' Union Company, but in the same suit, defendant denied judicially that claim, on the ground of the pendency of its Federal injunction. So that on the question of estoppel, the parties are equal, and inasmuch as the defendant was the author of both injunctions, it cannot escape liability on such a plea.

We cannot sustain the contention of defendant that the damage to plaintiff's property had all occurred prior to the institution of the Federal suit. No doubt, some injury had resulted, but the building had not then fallen, and, but for the insurmountable obstacle opposed by that suit, it might have been saved and the disastrous sale averted.

The efforts of defendant to show, in argument, that the enterprise of plaintiff would have been abortive and that no profits would have accrued are not sustained to our satisfaction by the evidence. All these matters have been considered by the jury and we are not disposed to disturb their verdict, which, though of considerable amount, is small in comparison with the profits derived by defendant from the illegal perpetuation of its monopoly during several years after it had been effectively destroyed by the organic law of the State.

On the whole, we think justice has been done.

Judgment affirmed.

A true copy:

JOHN AUGUSTIN,
Deputy Clerk.

To the Chief Justice of the Supreme Court of Louisiana:

The petition of the Crescent City Live Stock Landing and Slaughterhouse Company respectfully represents:

That petitioners believe there is error to their prejudice in the judgment of the Supreme Court of the State of Louisiana lately rendered in the case of the Butchers' Union Slaughterhouse and Live Stock Landing Company vs. these petitioners, No. 9461, on the docket thereof, in this, that the same refuses to give effect credit and force to the action and authority of the Circuit Court of the United States, for the 5th Circuit and Eastern District of

Louisiana; an authority exercised under and by virtue of the constitution and laws of the United States of America, and that petitioners believe and aver that they are entitled to have the said judgment revised and considered by the Supreme Court of the United States.

Wherefore they pray that your honor allow them a writ of error in the said case with supersedeas on giving bond and security according to law, in such sum as your Honor may deem proper and for general relief.

(Signed) ROBERT MOTT,
Attorney for Petitioner.

ORDER.

SUPREME COURT OF LOUISIANA.

Butchers' Union Slaughterhouse and Live Stock Landing Company
vs.
Crescent City Live Stock Landing and Slaughterhouse Co.
No. 9461.

On application of defendants for writ of error to the United States Supreme Court.

I am at a loss to discover what Federal question is involved, which would justify the granting of the writ. The application is therefore not allowed.

New Orleans, December 22nd, 1885.

(Signed) E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

SUPREME COURT OF THE STATE OF LOUISIANA.

The Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy, Appellants,
vs.
Butchers' Union Slaughterhouse and Live Stock Landing Company
No. 9461.

To the Honorable William B. Woods, Associate Justice of the Supreme Court of the United States:

The petition of the Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy, with respect, shows

that in the suit of the Butchers' Union Slaughterhouse and Live Stock Landing Company vs. your petitioners, No. 9461, of the docket of the Supreme Court of the State of Louisiana, there was rendered against your petitioners a final judgment, exceeding in amount the sum of five thousand dollars. That, in said suit, there was drawn in question a right, privilege and immunity in favor of petitioners, under the laws and constitution of the United States, and the decision of the Supreme Court of the State of Louisiana denied, in the decree above referred to, the right, privilege and immunity claimed.

That your petitioners applied to the Supreme Court of the State of Louisiana for a writ of error, to remove said cause into the Honorable, the Supreme Court of the United States, which was refused.

Wherefore, your petitioners pray the allowance of a writ of error, returnable to the Supreme Court of the United States, and for citation and supersedeas.

(Signed) ROBERT MOTT,
E. D. WHITE,
Of Counsel.

ORDER.

CITY OF WASHINGTON, December 22nd, 1885.

The writ of error to the Supreme Court of Louisiana, prayed for in the foregoing petition, is allowed, and the same shall operate as a supersedeas on the giving, by the petitioners for the writ, of a bond, conditioned according to law, in the penalty of thirty-five thousand dollars, to be approved by the undersigned. Such bond has been given and allowed by me.

(Signed) W. B. WOODS,
Associate Justice United States Supreme Court.

BOND FOR WRIT OF ERROR.

Know all men by these presents, That we, the Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy as principle, and as sureties, are held and firmly bound unto the Butchers' Union Slaughterhouse and Live Stock Landing Company in the full and just sum of thirty-five thousand dollars; to be paid to the said Butchers' Union Slaughterhouse and Live Stock Landing Company, their certain

attorney, executors, administrators or assigns ; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administators, jointly and severally, by these presents. Sealed with our seals and dated this day of December, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas, lately, at a Supreme Court of the State of Louisiana, holding sessions in and for the State of Louisiana at New Orleans, Louisiana, in a suit depending in said Supreme Court, wherein the Butchers' Union Slaughterhouse and Live Stock Landing Company is plaintiff, and the Crescent City Live Stock Landing and Slaughterhouse Company and B. Saloy are defendants, judgment was rendered against said Crescent City Live Stock Landing and Slaughterhouse Company and B. Saloy, defendants, and the said Crescent City Live Stock Landing and Slaughterhouse Company and B. Saloy having obtained a writ of error and filed a copy thereof in the clerk's office of the said Supreme Court of the State Louisiana, holding sessions at New Orleans, Louisiana, to reverse the judgment in the aforesaid suit, and a citation directed to the said Butchers' Union Slaughterhouse and Live Stock Landing Company, citing and admonishing the said Butchers' Union Slaughterhouse and Live Stock Landing Company to be and appear at the Supreme Court of the United States to be holden at Washington, the second Monday of October next.

Now, the condition of the above obligation is such, that if the said Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy, shall prosecute their writ to effect and answer all damages and cost if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

[L. S.] (Signed) J. HERNANDEZ, President.
[L. S.] " B. SALOY.
Fifteen thousand dollars.
(Signed) J. HERNANDEZ.
Twenty thousand dollars.
(Signed) E. GAUCHE.

Sealed and delivered in the presence of

Approved December 22d, 1885.
(Signed) W. B. WOODS,
Associate Justice U. S. Supreme Court.

AFFIDAVIT.

United States of America, } S. S.
District of Louisiana. }

Personally appeared Joseph Hernandez, who being duly sworn, deposes and says, that he is the surety on the within bond, that he resides in the city of New Orleans, in the State of Louisiana, and is worth the full sum of fifteen thousand dollars over and above all his debts and liabilities, and property exempt from execution.

(Signed) J. HERNANDEZ.

Sworn to and subscribed before me, this 17th day of December, 1885.

(Signed) A. G. BRICE,
Commissioner U. S. Circuit Court, District of Louisiana.

AFFIDAVIT.

United States of America, } S. S.
District of Louisiana. }

Personally appeared Emile Gauche, who being duly sworn, deposes and says, that he is surety on the within bond, that he resides in the city of New Orleans, in the State of Louisiana, and is worth the full sum of twenty thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) E. GAUCHE.

Subscribed and sworn before me this 17th day of December, 1885.

(Signed) A. G. BRICE,
Commissioner U. S., Circuit Court, District of Louisiana.

BOND FOR WRIT OF ERROR.
Filed December 24th, 1885.

(Signed) GEORGE W. DUPRE,
Clerk Supreme Court of Louisiana.

WRIT OF ERROR.

UNITED STATES OF AMERICA, S. S.

The President of the United States of America.

[L. S.] To the Honorable the Judges of the Supreme Court of the State of Louisianas—Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between the Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy, appellants, and the Butchers' Union Slaughterhouse and Live Stock Landing Company, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under the United States and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission; a manifest error has happened to the great damage of the said appellants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness: the Honorable Harrison R. Waite, Chief Justice of the said Supreme Court, the twenty second day of December, in the year of our Lord one thousand eight hundred and eighty-five.

(Signed) JAMES H. McKENNY,
Clerk of the Supreme Court of the United States.

Allowed by
(Signed) W. B. WOOD,
Associate Justice United States Supreme Court.

ENDORSEMENT.

SUPREME COURT OF LOUISIANA.

Filed December 24th, 1885.

(Signed) GEORGE W. DUPRE,
Clerk.

The Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy, plaintiffs in error.
vs.
The Butchers' Union Slaughterhouse and Live Stock Landing Company, defendants in errors.
No. 9461.

Copy of writ of error lodged in the clerk's office of the Supreme Court of Louisiana, copy in pursuance of the statute in such cases made and provided, this 24th December, one thousand eight hundred and eighty-five.

(Signed) E. D. WHITE,
ROBERT MOTT.
Attorneys of plaintiffs in error.

CERTIFICATE OF THE CLERK OF THE SUPREME COURT.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA.

SUPREME COURT OF THE STATE OF LOUISIANA.

I, George W. Dupre, Clerk of the Supreme Court of the State of Louisiana, holding sessions at the City of New Orleans, do hereby certify, that the foregoing 39 pages contain a full true and complete copy of all the pleadings and proceedings had in the Civil District Court for the Parish of Orleans, State of Louisiana, included in the transcript of the record in this court, (only omitting the testimony and evidence adduced) of a certain suit, wherein the Butchers' Union Slaughterhouse and Live Stock Landing Company were plaintiffs, and the Crescent City Live Stock Landing and Slaughterhouse Company and Bertrand Saloy, were defendants, numbered 11489, in the said Civil District Court for the Parish of Orleans, Louisiana, and numbered 9461 in this Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Honorable Court, at the City of New Orleans, this sixth day of January, anno domini one thousand eight hundred and eighty-six, and in the one hundred and tenth of the Independence of the United States of America.

[SEAL] (Signed) GEORGE W. DUPRE,
Clerk of the Supreme Court of Louisiana.

CERTIFICATE OF THE CHIEF JUSTICE.

UNITED STATES OF AMERICA,
STATE OF LOUISIANA.

SUPREME COURT OF THE STATE OF LOUISIANA.

I, Edward Bermudez, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify, that George W. Dupre is Clerk of the Supreme Court of the State of Louisiana, holding sessions at the City of New Orleans; that the signature of George W. Dupre to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such

In testimony whereof, I have hereunto set my hand and seal, at the City of New Orleans, this sixth day of January, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL] (Signed) E. BERMUDEZ,
Chief Justice of the Supreme Court of Louisiana.